

## Nat'l Oceanic and Atmospheric Adm., Commerce

## § 904.1

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AUTHORITY: 16 U.S.C. 1801–1882; 16 U.S.C. 1531–1543; 16 U.S.C. 1361–1407; 16 U.S.C. 3371–3378; 16 U.S.C. 1431–1439; 16 U.S.C. 773–773k; 16 U.S.C. 951–961; 16 U.S.C. 5001–5012; 16 U.S.C. 3631–3644; 42 U.S.C. 9101 *et seq.*; 30 U.S.C. 1401 *et seq.*; 16 U.S.C. 971–971k; 16 U.S.C. 781 *et seq.*; 16 U.S.C. 2401–2413; 16 U.S.C. 2431–2444; 16 U.S.C. 972–972h; 16 U.S.C. 916–916i; 16 U.S.C. 1151–1175; 16 U.S.C. 3601–3608; 16 U.S.C. 1851

note; 15 U.S.C. 5601 *et seq.*; Pub. L. 105–277; 16 U.S.C. 1822 note, Section 801(f); 16 U.S.C. 2465(a); 16 U.S.C. 5103(b); 16 U.S.C. 1385 *et seq.*; 16 U.S.C. 1822 note (Section 4006); 16 U.S.C. 4001–4017; 22 U.S.C. 1980(g); 16 U.S.C. 5506(a); 16 U.S.C. 5601–5612; 16 U.S.C. 1822; 16 U.S.C. 973–973(r); 15 U.S.C. 330–330(e).

SOURCE: 71 FR 12448, Mar. 10, 2006, unless otherwise noted.

### Subpart A—General

#### § 904.1 Purpose and scope.

(a) This part sets forth the procedures governing NOAA's administrative proceedings for assessment of civil penalties, suspension, revocation, modification, or denial of permits, issuance and use of written warnings, and release or forfeiture of seized property.

(b) This subpart defines terms appearing in this part and sets forth rules for the filing and service of documents in administrative proceedings covered by this part.

(c) The following statutes authorize NOAA to assess civil penalties, impose permit sanctions, issue written warnings, and/or seize and forfeit property in response to violations of those statutes:

(1) American Fisheries Act of 1998, Public Law 105–277;

(2) Anadromous Fish Products Act, 16 U.S.C. 1822 note, Section 801(f);

(3) Antarctic Conservation Act of 1978, 16 U.S.C. 2401–2413;

(4) Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431–2444;

(5) Antarctic Protection Act of 1990, 16 U.S.C. 2465(a);

(6) Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5103(b);

(7) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601–3608;

(8) Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note;

(9) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971k;

(10) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;

(11) Dolphin Protection Consumer Information Act, 16 U.S.C. 1385 *et seq.*;

(12) Driftnet Impact Monitoring, Assessment, and Control Act, 16 U.S.C. 1822 note (Section 4006);

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(13) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972–972h;

(14) Endangered Species Act of 1973, 16 U.S.C. 1531–1543;

(15) Fish and Seafood Promotion Act of 1986, 16 U.S.C. 4001–4017;

(16) Fisherman's Protective Act of 1967, 22 U.S.C. 1980(g);

(17) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151–1175;

(18) High Seas Fishing Compliance Act, 16 U.S.C. 5506(a);

(19) Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378;

(20) Land Remote-Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.*;

(21) Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801–1882;

(22) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1407;

(23) National Marine Sanctuaries Act, 16 U.S.C. 1431–1439;

(24) North Pacific Anadromous Stocks Convention Act of 1992, 16 U.S.C. 5001–5012;

(25) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773–773k;

(26) Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601–5612;

(27) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.*;

(28) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631–3644;

(29) Shark Finning Prohibition Act, 16 U.S.C. 1822;

(30) South Pacific Tuna Act of 1988, 16 U.S.C. 973–973(r);

(31) Sponge Act, 16 U.S.C. 781 *et seq.*;

(32) Tuna Conventions Act of 1950, 16 U.S.C. 951–961;

(33) Weather Modification Reporting Act, 15 U.S.C. 330–330e; and

(34) Whaling Convention Act of 1949, 16 U.S.C. 916–916l.

(d) The procedures set forth in this part are intended to apply to administrative proceedings under these and any other statutes or authorities administered by NOAA.

### § 904.2 Definitions and acronyms.

Unless the context otherwise requires, or as otherwise noted, terms in this Part have the meanings prescribed in the applicable statute or regulation. In addition, the following definitions apply:

*Administrator* means the Administrator of NOAA or a designee.

*Agency* means the National Oceanic and Atmospheric Administration (NOAA).

*ALJ Docketing Center* means the Docketing Center of the Office of Administrative Law Judges.

*Applicable statute* means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

*Authorized officer means:*

(1) Any commissioned, warrant, or petty officer of the USCG;

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary to enforce the provisions of any statute administered by NOAA; or

(4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

*Citation* means a written warning (see section 311(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1861(c), and section 11(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773i(c)).

*Civil penalty* means a civil administrative monetary penalty assessed under the civil administrative process described in this part.

*Decision* means an initial or final administrative decision of the Judge.

*Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling, and status.

*Final administrative decision* means an order or decision of NOAA assessing a civil penalty or permit sanction which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

*Forfeiture* includes, but is not limited to, surrender or relinquishment of any claim to an item by written agreement, or otherwise; or extinguishment of any claim to, and transfer of title to an item to the U.S. Government by court